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ABSTRACT

This publication is intended for teachers bringing a class to visit the National Archives in Washington, D.C., for a workshop on primary documents. The National Archives serves as the repository for all federal records of enduring value. Primary sources are vital teaching tools because they actively engage the student's imagination so that he or she may visualize past events and make sense of their reality and meaning. This publication concerns the Bill of Rights to the U.S. Constitution. Historical information on the Bill of Rights as well as on the internment of Japanese Americans during World War II is included. A photograph of the Bill of Rights and a photograph of persons of Japanese ancestry arriving at an internment center during World War II are included, as are two student exercises. (DB)

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ED 364 450

The Charters of Freedom

The Bill of Rights

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The Charters of Freedom

The Bill of Rights

FOR THE TEACHER

Thank you for arranging a National Archives workshop for your class. For too many students, history is just an endless string of dates and events chronicled in a textbook. Primary sources actively engage the student's imagination so that he or she may visualize past events and sense their reality and meaning. Before your workshop, it would be advantageous to introduce your students to primary sources with the poster-size documents and the attendant exercises we have provided. The exercises may be photocopied and should be adapted to fit your objectives and teaching style. We hope that these preliminary materials and our workshop will enhance your class's understanding and appreciation of the symbol and the substance of the American conception of individual liberty, the Bill of Rights.

The Bill of Rights

One of the major reasons for much of the battle over the ratification of the U.S. Constitution was the absence of a bill of rights. In December 1787, after the Constitutional Convention at Philadelphia had adjourned, George Mason (a prominent Convention delegate and principal architect of Virginia's Declaration of Rights in 1776) succinctly stated the crux of Antifederalist opposition in a published explanation of his refusal to sign the Constitution: "There is no declaration of rights; and the laws of the general government being paramount to the laws and constitutions of the several states, the declarations of rights in the separate states are no security."

Those delegates who had signed the Constitution did not oppose the principle of a bill of rights. They merely believed it unnecessary because the new federal government would be one of expressed powers only, and the state constitutions had already secured the fundamental rights of individuals. Other delegates placed little faith in what James Madison derided as "parchment barriers" against majority rule and thus sought protection in structural arrangements such as the separation of powers and its attendant system of checks and balances.

Structural arrangements, however, did not satisfy the Antifederalists, and they quickly learned that the absence of a bill of rights gave them an effective way to attack the Constitution. The opponents of ratification used this powerful argument to gain the upper hand, and it soon became apparent to the Federalists, and specifically to James Madison, that a proposal to add amendments to the Constitution after its ratification was inevitable. Even Thomas Jefferson, who for the most part favored the new government, wrote to Madison that a bill of rights was "what the people are entitled to against every government on earth." Only by making such a concession were the Constitution's supporters able to win ratification in such closely divided states as New York and Virginia.

In the First Federal Congress, Madison worked tirelessly to fulfill his pledge. Carefully selecting 17 amendments from proposals introduced by the state ratifying conventions, Madison guided this legislation through Congress despite indifference on the part of some House members (who thought the House had more pressing concerns) and open antagonism on the part of others (Antifederalists who sought a second convention to curtail the powers of the federal government). On October 2, 1789, after the Senate had trimmed down the amendment package from 17 articles to 12, President Washington submitted copies of the adopted amendments to the states for ratification. With Virginia's ratification on December 15, 1791, three-fourths of the states had ratified the Bill of Rights, and it became part of the Constitution.

The reproduction on the front of your poster is a copy of the original Bill of Rights, which is enshrined at the National Archives. Your students probably know that the first 10 amendments to the Constitution constitute the Bill of Rights. They should notice, however, that the original Bill of Rights lists 12 amendments. The two additional amendments, "Article the first" concerning the number of representatives and "Article the second" dealing with a time constraint on congressional pay raises, were not ratified in 1791. The second article, however, eventually received the ratification of three-fourths of the states on May 7, 1992, when Michigan became the 38th state to approve it. The 203-year odyssey of what is now the 27th amendment culminated on May 18, 1992, when the Archivist of the United States, Don W. Wilson, certified its legitimacy as required by law.

Never before had ratification taken two centuries. In 1921 and 1939 the Supreme Court ruled that constitutional amendments must be ratified within a reasonable period of time but left it up to Congress to define what that meant. Congress established a 7-year time limit for ratification of amendments sent to the states (the Equal Rights Amendment, for example, was a casualty of this time restriction). The first Congress, however, set no such limit on the pay raise amendment, making its delayed ratification possible.

Using the reproduction of the original Bill of Rights as a starting point, discuss with your class the nature of this constitutional anomaly. Ask your students to research the 27th amendment's extended quest for ratification by consulting newspaper articles and more recent works such as William L. Miller's *The Business of May Next: James Madison & the Founding*.

The Internment of Japanese Americans

The Japanese torpedoes that decimated the U.S. Navy at Pearl Harbor on December 7, 1941, plunged the United States into a global struggle for survival. The conflict also brought about a critical test of the nation's constitutional democracy. If the United States was to survive, could the Constitution survive with it? Could civil liberties, the rights of individuals and of minorities, be upheld during times of national crisis?

The relocation and internment of more than 100,000 civilians of Japanese descent by the U.S. government during World War II was clearly an ominous failure of that test. Uprooted from their homes, their businesses, and their farms, Japanese Americans were held from 1942 to 1945 under armed guard and behind barbed wire. They were thoroughly deprived of their constitutional rights of personal security: the right to move about freely, the right to live and work where one likes, the right to establish and keep a home, and the right not to have these rights violated or withheld without formal charges, proper notice, a fair hearing and trial, and all the other procedural requirements of due process of the law.

In three cases challenging the policy of evacuation and detention — *Hirabayashi* v. *United States* (1943), *Korematsu* v. *United States* (1944), and *Ex parte Endo* (1944) — the U.S. Supreme Court effectively managed to avoid wrestling with the constitutionality of internment. The Court chose to view the program of the military authorities as a series of separate orders and not as an overall plan. According to the Court, the separate orders for persons of Japanese ancestry were as follows: "(1) depart from the area; (2) report to and temporarily remain in an assembly center; (3) go under military control to a relocation center there to remain for an indeterminate period." This reasoning allowed the Court to hand down, on the same day, a decision against Fred Korematsu (declaring that as he was convicted of violating only the first order, it was unnecessary to question the constitutionality of anything more than that particular exclusion order) and a decision for Mitsuye Endo (declaring that the War Relocation Authority had overstepped its authority in executing the third order) without either of the two cases overturning the other. In *Ex parte Endo*, only Justice Owen Roberts protested the Court's reluctance to face up to the serious constitutional issues at stake: "I concur in the result but I cannot agree with the reasons stated in the opinion of the court for reaching that result. As in *Korematsu* v. *United States*, No. 22 of this Term, the court endeavors to avoid constitutional issues which are necessarily involved." Nonetheless, the Court's decisions in all three cases had injected into American law a dangerous doctrine of military supremacy during time of war and set a precedent for repressive action against minority groups. In 1988 Congress authorized restitution payments of $20,000 to each of the 60,000 surviving internees and apologized for the injustice.

The reproduction on the back of your poster is a photograph of evacuees arriving at the notoriously overcrowded "Assembly Center" at the Santa Anita Racetrack (men, women, and children were housed in stalls) on April 5, 1942. With this as a starting point, have your students consider whether or not such an event could happen today. When formulating their answers, they should keep in mind the legal precedent set by the Supreme Court and subsequent congressional actions.

What is the National Archives?

Established in 1934, the National Archives helps preserve our nation's history by serving as the repository for all federal records of enduring value. It thus serves the federal government, researchers of many topics, and the American public. Because federal records reflect and document more than 200 years of American development, the records in the National Archives holdings are great in number, diverse in character, and rich in information.

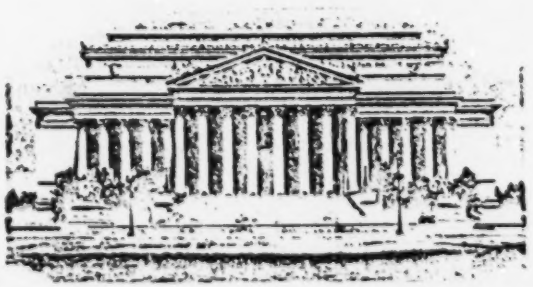
Before your students participate in a tour or a workshop, they should be familiar with the mission of the National Archives. We recommend that you present your students with the following vocabulary words and questions:

- *Please define Archives, Archivist, Document, Record, Preservation.*
- *Why do you and your family save documents? Why are they important?*
- *The U.S. government keeps its records in the National Archives.*
  Why does the government save its records?
- *What kinds of records might the U.S. government want to save?*
- *What famous documents are at the National Archives?*

You will be called by the National Archives docent assigned to your class about a week before the date of your tour or workshop. If the workshop will be held in your classroom, then please be prepared to relay information concerning directions, parking, and school check-in procedures.

Whether it is our Behind-the-Scenes Tour or one of our Primary Document Workshops, we are confident that the experience will provide an exciting new look at history. In order to assess our performance, we would appreciate your cooperation in completing the enclosed evaluation form and returning it in the self-addressed, stamped envelope provided.

If you have any additional questions regarding your tour or workshop, please contact the Volunteer and Tour Office Staff at 202-501-5205.



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Exercise I:

The Bill of Rights

Study the reproduction of the Bill of Rights. *Remember, this was the original bill submitted to the states for ratification.*

1. Where and when was the Congress being held? _____

2. Who was the Speaker of the House? Who was the President of the Senate? _____

_____ _____

3. Is "Article the first" the first amendment to the Constitution? _____

4. Is "Article the second" the second amendment to the Constitution? If not, then which amendment is it? _____

5. Which amendment makes it illegal for the government to tell you where to go to church?

6. Which amendment forbids the government from torturing those who have committed a crime? _____

7. Which amendment protects your home from unlawful (without a "warrant") entry and the taking of your possessions by the police? _____

_____

8. Which amendment makes it illegal for military personnel to use your home for barracks?

9. What exactly does the ninth amendment mean for a U.S. citizen? _____

_____

_____

_____ _____

Exercise II:

Persons of Japanese ancestry arriving at the Santa Anita Assembly Center

Study the photograph carefully in order to form an historical understanding of what is taking place.

1. Is this a civil disturbance? _____

2. Who are the people lined up against the train? _____

3. Why are they lined up against the train? _____

_____

4. What is the role of or the need for military personnel in this circumstance? _____

_____

5. What is the year? What event is being depicted? _____

_____

6. What previous political events have brought this moment to pass? _____

_____

7. Why did people think at the time that actions like the one depicted in the photograph were essential to the national security of the United States? Evaluate these reasons.

_____

_____

_____

8. After having ascertained the event taking place and its larger historical context, determine whether or not the individual liberties of the civilians in the photograph were protected or violated according to the Bill of Rights.

_____

_____

_____

Congress of the United States

begun and held at the City of New-York, on
Wednesday the fourth of March, one thousand seven hundred and eighty nine.

THE Conventions of a number of the States having at the time of their adopting the Constitution expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government will best ensure the beneficent ends of its institution

RESOLVED by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both Houses concurring, that the following Articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States, all or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes as part of the said Constitution, viz.

ARTICLES in addition to, and amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

Article the first. After the first enumeration required by the first Article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be regulated by Congress, that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons until the number of Representatives shall amount to two hundred, after which the proportion shall be regulated by Congress, that there shall not be less than two hundred Representatives, nor more than one Representative for every fifty thousand persons.

Article the second. No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

Article the third. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and petition the Government for a redress of grievances.

Article the fourth. A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

Article the fifth. No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Article the sixth. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article the seventh. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.

Article the eighth. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

Article the ninth. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Article the tenth. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article the eleventh. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article the twelfth. The powers not delegated by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ATTEST

Frederick Augustus Muhlenberg Speaker of the House of Representatives.

John Adams Vice President of the United States, and President of the Senate.

John Beckley Clerk of the House of Representatives.

Sam.A. Otis Secretary of the Senate.

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The Bill of Rights
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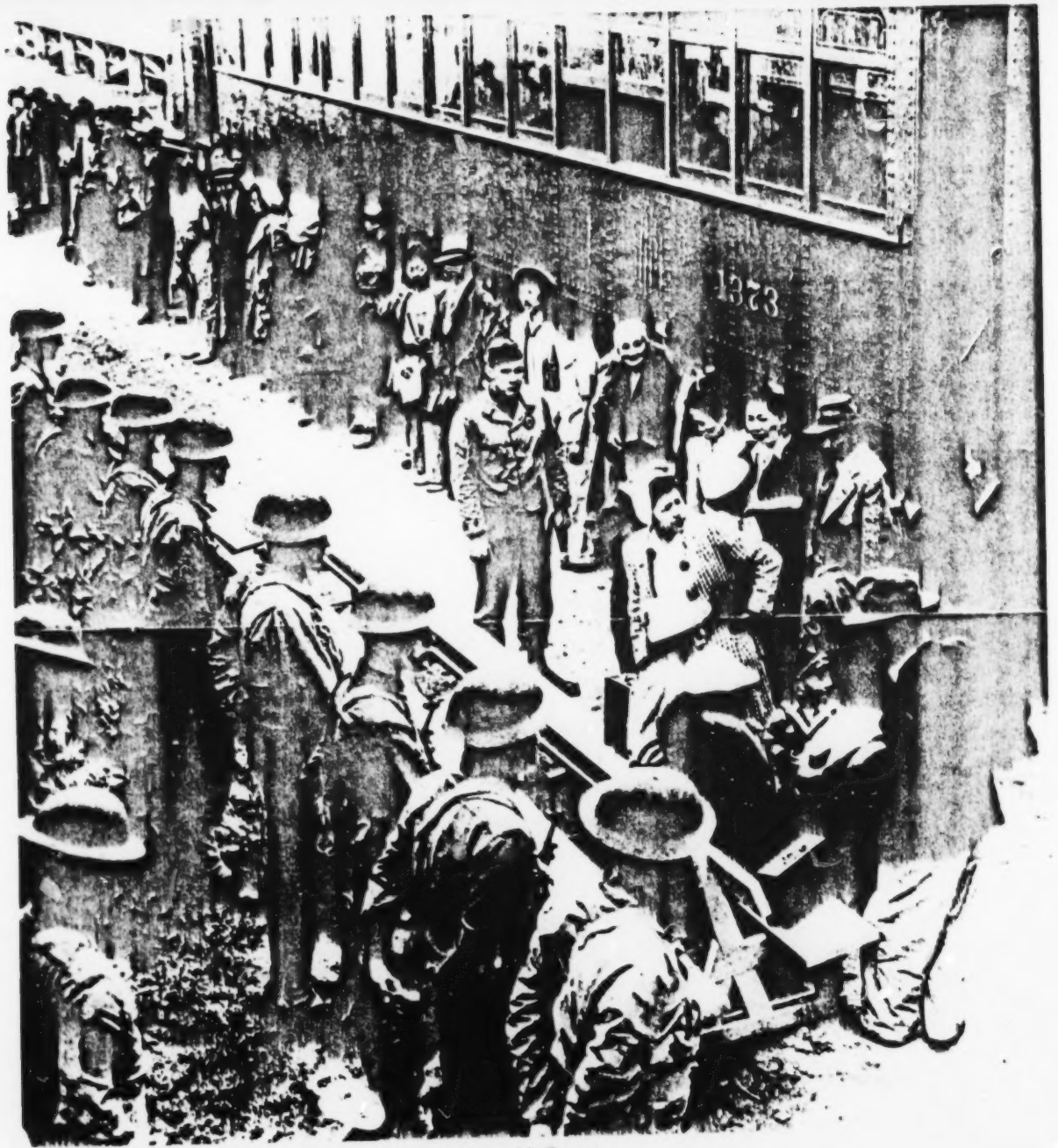

Persons of Japanese ancestry arriving at the Santa Anita Assembly Center
The National Archives

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